

Application No. 10/674,971  
Amendment dated March 17, 2009  
Reply to Office Action of October 17, 2008

### **REMARKS**

Applicant amended independent claims 29 and 39 and dependent claims 50 and 52 to further define Applicant's claimed invention. Support for the amendment to independent claims 29 and 39 can be found in the specification at least on page 9, lines 1-3 and page 15, lines 9-13, and FIGS. 1 and 6C. No new matter has been added.

In the Office Action, the Examiner rejected claims 29-59 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant amended independent claims 29 and 39 and dependent claims 50 and 52 to provide antecedent basis for the claimed elements. Applicant submits that the rejection of claims 29-59 under 35 U.S.C. § 112, second paragraph, has been overcome.

The Examiner rejected claims 29-59 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,033,438 to Bianchi et al. ("Bianchi"). Applicant respectfully traverses the rejection. Independent claims 29 and 39 recite providing an implant having "generally non-linear leading and trailing ends." Conversely, FIGS. 8 and 9 of Bianchi referred to by the Examiner show that the leading and trailing ends of the implants are both linear. Nonetheless, Applicant amended independent claims 29 and 39 to expedite the prosecution of this application.

Applicant amended independent claims 29 and 39 to include at least one implant having a length between the leading and trailing ends adapted to allow at least a portion of the implant proximate the leading end and at least a portion of the implant proximate the trailing end to "each overlie a peripheral rim of the densely compacted bone along the anatomical curvature of the adjacent vertebral bodies when said implant is implanted in the disc space." Applicant further amended independent claim 29 to recite "positioning the leading end of the implant so that at least a portion of the implant proximate the leading end between the medial side and the mid-longitudinal axis overlies the peripheral rim without substantially protruding from the spine" and "positioning the trailing end of the implant so that at least a portion of the implant proximate the trailing end between the medial side and the mid-longitudinal axis

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overlies the peripheral rim when said at least a portion of the implant proximate the leading end overlies the peripheral rim without substantially protruding from the spine." Applicant further amended independent claim 39 to recite "positioning the leading end of each implant so that at least a portion of the implant proximate the leading end between the medial side and the mid-longitudinal axis overlies the peripheral rim without substantially protruding from the spine" and "positioning the trailing end of each implant so that at least a portion of the implant proximate the trailing end between the medial side and the mid-longitudinal axis overlies the peripheral rim when said at least a portion of the implant proximate the leading end overlies the peripheral rim without substantially protruding from the spine." Neither one of Figures 8 and 9 of Bianchi cited by the Examiner depicts such methods. Fig. 9 of Bianchi is reproduced and annotated below for the Examiner's reference.

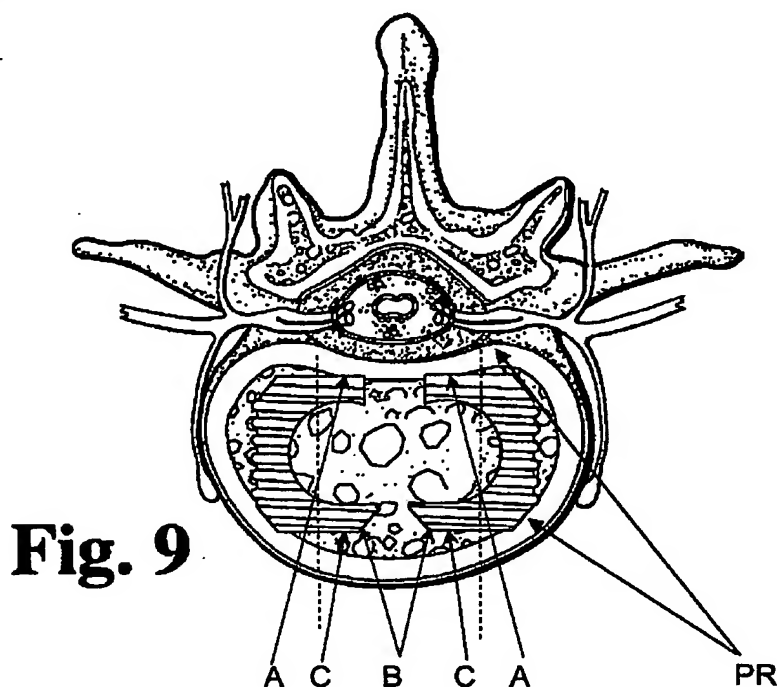


Fig. 9 of Bianchi shows that the trailing end (A) of the implant is substantially linear and does not "conform to at least a portion of the natural anatomical curvature" of the posterior aspect of the vertebral body. Fig. 9 also shows (1) that the implants are

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not positioned so that at least a portion (C) of the implant proximate the leading end between the medial side and the mid-longitudinal axis (dotted line) overlies the peripheral rim (PR) of the densely compacted bone along the anatomical curvature of the vertebral body; and (2) that the implants are not positioned so that at least a portion (A) of the implant proximate the trailing end between the medial side and the mid-longitudinal axis of the implant overlies the peripheral rim when the portion (C) of the implant proximate the leading end overlies the peripheral rim without substantially protruding from the spine. Moreover, Fig. 9 of Bianchi shows that the lengths of each implant at the medial sides thereof do not allow a portion of the trailing end and a portion of the leading end both being between the medial sides and the mid-longitudinal axes to each overlie the peripheral rim when the implants are implanted in the disc space. Thus, the figures of Bianchi relied on by the Examiner do not disclose a method as recited in Applicant's independent claims 29 and 39.

Applicant submits that the Examiner's 35 U.S.C. § 102(e) rejection of independent claims 29 and 39 and dependent claims 30-38 and 40-59 dependent from one of independent claims 29 and 39, or claims dependent therefrom, has been overcome.

Applicant submits that independent claims 29 and 39 are patentable and that dependent claims 30-38 and 40-59 dependent from one of independent claims 29 and 39, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including

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any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

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